

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5501 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

AK RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR JF SHAH for Petitioner

MR HASURKAR GOVT SOLICITOR for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 02/09/98

ORAL JUDGEMENT

The petitioner is serving as a Range Forest Officer. When he was transferred from Kathlal to Baroda, he was allotted Government quarters on 26-5-90. The petitioner was thereafter transferred to Rajpipla on 8-12-1994. However, the petitioner continued to retain the possession of the quarters at Baroda till 3-6-95. It appears that on 15-9-95, the petitioner was served with a

communication calling upon him to pay Rs.8815/- being the amount of rent recoverable from the petitioner since December, 1994.

The petitioner on 16-10-95 replied to the said communication . After considering the reply, the City Executive Engineer (R&B) , Vadodara, modified the earlier order and directed the petitioner to pay Rs.7724/according to the following break-up:

Rent at the Rent Gas service Total rent
prevalent rate charges

From 8-12-94 Rs.75 + Rs.25 Rs.100
to 7-1-95

From 8-1-95 Rs.75 + Rs.25 Rs.100
to 7-2-95.

Rent at the
Market rate
From 8-2-95
to 3-6-95 Rs.7424.00+Rs.100
Rs.7524. 00

Total Rs. 7724.00

Inspite of paying the said amount, the petitioner made a representation to the Collector and Chairman of the District Quarters Allotment Committee on 23-2-96. It further appears that on 19-3-96 , the Deputy Conservator of Forest, Nadiad, passed an order directing the petitioner to pay an amount of Rs.7724/- and to obtain no-due certicficate from the office of the Executive Engineer. It is further stated in the said order that if the petitioner fails to pay the said amount, his salary and other payments shall not be released. Despite the aforesaid, the petitioner made another representation to the Executive Engineer on 27-3-96 against the said order dated 19-3-96 and the Executive Engineer on 9-4-96 informed the Deputy Conservator of Forest, Nadiad not to effect recovery from the salery of the petitioner till his office has received further letter in that behalf on the ground that the application of the petitioner is under consideration. The Deputy Conservator of Forest vide his communication dated 2-9-96 informed the petitioner that his representation has been rejected and the petitioner was, therefore, called upon to make payment of the amount of Rs.7724/- and obtain no-due

certificate failing which he was informed that he will not be paid any dues by the Government . The Executive Engineer also informed the Deputy Conservator of Forest vide his letter dated 30-8-96 to effect immediate recovery of the amount of Rs.7724/-. The petitioner even thereafter made one more representation dated 17-12-96 to the Executive Engineer and lastly the petitioner made a representation dated 29-5-97 to the Deputy Secretary to the Government of Gujarat . Since no favourable reply was received by the petitioner from the State Government, the petitioner has approached this Court.

Heard the learned Advocate Mr. Vaishnav at length. He submitted that the impugned orders passed by the respondent-authorities are illegal and in violation of the principles of natural justice inasmuch as no notice was issued to the petitioner before passing the said orders for recovery of the amount of rent for the Government quarters occupied by him. It was further contended that the respondent-authorities have no authority to deduct the amount of rent from the salary of the petitioner. Reliance is also placed on the decision of this Court in the case of V.L.Parmar vs District Superintendent of Police and another , Special Civil Application No. 5111 of 1996 decided on 3-9-96. Having gone through the same, I find that admittedly in that case no notice was given to the petitioner and, therefore, this Court quashed and set aside the order of recovery of rent at the market rate. In the instant case right from the 1st communication dated 15-9-95 till 17-12-96, the case of the petitioner was under consideration before the respondent-authorities. As stated above, the representation of the petitioner was duly considered and the amount of Rs.8815/0 was reduced to the amount of Rs.7724/-. Not only that but the concerned respondent had also stayed the order of recovery of the outstanding amount of rent from the salary of the petitioner till his representation is decided. These facts would clearly go to suggest that the petitioner was duly heard and there is no violation of the principles of natural justice. No statutory provision is pointed out warranting the respondents to follow certain provisions of holding inquiry in the matter. In view of the undisputed facts that the petitioner overstayed in the quarters for which the market rent was charged, I do not think it is necessary requiring the respondents to follow certain procedure which is necessary in other cases. Now a days it has become a tendency on the part of the Government servants to occupy the Government quarters indefinitely after transfer and/or retirement under one or the other pretext

and to raise all sorts of disputes challenging the order of recovery of rent either at the economic rate or at the market rate or the mode and manner of recovery of the arrears of rent. Once the amount of rent is not paid for the period of unauthorised occupation of the quarters, I fail to understand what would be the procedure for the Government to recover the same, except supplying break-up of calculation of the rent recoverable from the Government servant and deducting the same from the salary of the Government servant, and in my view the only and the proper mode of recovery that is available to the Government is to deduct the same from the salary or other payments. If that procedure is followed, which is the minimum which the Government can do, it is too much to expect the Government to file suits for recovery of rent for the unauthorised occupation of the Government quarters. So long as the Government servant is in employment, the only way to recover the amount is by way of deducting the same from his salary. Since in the instant case, the petitioner even though he was informed about the recovery which is required to be effected for his over-staying in the Government quarters and since the petitioner has not paid the same, even after the rejection of his representation, it does not now lie in the mouth of the petitioner to contend that no recovery can be effected or that the recovery cannot be made from his salary. In view of this, I see no merit in this petition. Hence it is rejected. Notice is discharged with no order as to costs.

The petitioner is directed to pay, if not paid, the amount of arrears at the market rate as demanded by the respondents within three weeks from to-day.

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